

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAYMOND GEBAUER,

Defendant.

No. CR06-0122RSL

ORDER DENYING MOTIONS TO
DISMISS

I. INTRODUCTION

This matter comes before the Court on defendant's motions to dismiss (Dkt. #79) (Dkt. #80). Defendant seeks to dismiss the Second Superseding Indictment for a number of reasons, many of which have been raised in motions already denied or otherwise addressed by the Court. See Order Denying Motion for Judicial Findings (Dkt. #65), Order Granting Motion for Bill of Particulars (Dkt. #67), Order Denying Motion for Reconsideration (Dkt. #71), Order Denying Motion for Statement of Government's Intention to Use Evidence in its Case-in-Chief at Trial (Dkt. #75), Order Denying Motion for Disclosure of Grand Jury Minutes (Dkt. #76), and Order Denying Motion for Additional Bill of Particulars (Dkt. #83). For the reasons discussed below, defendant's motions to dismiss are denied.

II. DISCUSSION

A. The Second Superseding Indictment is Legally Sufficient

Defendant contends that the indictment fails to allege all the essential elements of the

1 crimes he is charged with and that this is grounds for having the indictment dismissed with
2 prejudice. The Court disagrees. “[A]n indictment is sufficient if it, first, contains the elements
3 of the offense charged and fairly informs a defendant of the charge against which he must
4 defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions
5 for the same offense.” United States v. Morrison, 536 F.2d 286, 288 (9th Cir. 1976) (quoting
6 Hamling v. United States, 418 U.S. 87, 117 (1974)). The indictment achieves both these
7 purposes in this case.

8 Defendant is charged with four counts of tax evasion in violation of 26 U.S.C. § 7201.
9 The elements required to prove a violation of 26 U.S.C. § 7201 are (1) willfulness; (2) the
10 existence of a tax deficiency; and (3) an affirmative act constituting an evasion or attempted
11 evasion of a tax. Sansone v. United States, 380 U.S. 343, 351 (1965). All four counts of the
12 Second Superseding Indictment allege these elements. Specifically, each count alleges that
13 defendant “willfully attempt[ed] to evade and defeat a large part of the income tax due and
14 owing by him,” that there was “tax due and owing,” and that defendant attempted to evade these
15 taxes “by taking affirmative acts to conceal from the United States the true amount of his
16 income.” Dkt. #46. The indictment informed defendant of the charges against him and it is
17 drafted with sufficient specificity to prevent further prosecution on the same facts. See United
18 States v. Buckner, 610 F.2d 570, 573-74 (9th Cir. 1979).

19 Defendant’s arguments to the contrary lack legal merit. As the Court also noted in its
20 May 18, 2007 Order, the Ninth Circuit has rejected defendant’s contention that the Government
21 was required to cite to 26 U.S.C. § 6012 in the indictment in order to give him notice of the
22 charges filed against him. United States v. Weathers, 2007 WL 34092 at *1 (9th Cir. Jan. 5,
23 2007) (unpublished). The Ninth Circuit has also clearly rejected defendant’s argument that the
24 Government is required to allege the specific amount of tax deficiency owed in the indictment.
25 See Buckner, 610 F.2d at 573. Further, other courts have noted that an indictment need not
26 contain allegations “of the particular means by which the defendant attempted to evade and
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1 defeat the tax.” United States v. Edwards, 777 F.2d 644, 649 (11th Cir. 1985).¹ Defendant’s
2 motion to dismiss the indictment as legally insufficient is denied.

3 **B. There is No Evidence that the Grand Jury was Abused**

4 Defendant also contends that the Government abused the grand jury and that he is
5 therefore entitled to either the disclosure of grand jury transcripts or dismissal of the indictment.
6 In doing so, defendant reasserts arguments that were considered, and rejected, by the Court on
7 two separate occasions. See Order Denying Motion for Reconsideration (Dkt. #71) and Order
8 Denying Motion for Disclosure of Grand Jury Minutes (Dkt. #76). As the Court noted in its May
9 8, 2007 order, “it is well established that ‘mere unsubstantiated, speculative assertions of
10 improprieties in the proceeding do not supply the particularized need required to outweigh the
11 policy of grand jury secrecy.’” Dkt. # 76 (quoting United States v. Ferreboeuf, 632 F.2d 832,
12 835 (9th Cir. 1980)). Defendant has put forward no new legal authority or facts that would
13 support his renewed allegations of grand jury misconduct. As such, his requests for the
14 disclosure of grand jury transcripts and for dismissal of the indictment based on such misconduct
15 are denied for the same reasons cited in the Court’s earlier orders.

16 **C. The Statute of Limitations Has Not Run**

17 Defendant argues that Count 1 and 2 should be dismissed because “the statute of
18 limitations has run.” First Motion to Dismiss at p. 4. The statute of limitations is tolled upon
19 the return of an indictment. United States v. Sears, Roebuck & Co., Inc., 785 F.2d 777, 778 (9th
20 Cir. 1986). A superseding indictment remains timely unless it “‘broaden[s] or substantially
21 amend[s]’ the charges in the original indictment.” Id. (quoting United States v. Wilsey, 458
22 F.2d 11, 12 (9th Cir. 1972)). Here, all the indictments contained four counts of tax evasion, in
23 violation of 26 U.S.C. § 7201, for the same four years, 1998-2001. Because the charges in the
24 original indictment have not been broadened or substantially amended, defendant’s statute of
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27 ¹ The Government has also provided defendant with a Bill of Particulars outlining the
affirmative acts of concealment that it intends to prove at trial. See Dkt. 68.

1 limitations argument fails.

2 **III. CONCLUSION**

3 For the foregoing reasons, defendant's motions to dismiss (Dkt. #79) (Dkt. #80) are
4 DENIED.

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6 DATED this 13th day of June, 2007.

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9 Robert S. Lasnik
10 United States District Judge
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